

ORAL DEPOSITION OF ARTHUR MCKENZIE, JR.

Page 69

1 it, this and that. When people heard of me being --
 2 when other tankermen heard of me being suspended for
 3 three days, they had never heard of that before.
 4 Because like I said, that's just a matter of he could
 5 have very well just said, "Hey, Arthur, it's 12:49
 6 important. As a reminder when you leave here, go get
 7 it charged," and left it alone. Because that's what
 8 happens up there. That's up to the discretion of the
 9 supervisor.
 10 But, again, that's one of those situations 12:49
 11 where I felt -- that was my first disciplinary
 12 scenario. And that's how I felt any time I called
 13 Mason, which I've called him maybe three or four times
 14 to come and assist me on a barge, it would always be
 15 an intimidating reprimand. It was never -- I never 12:50
 16 felt comfortable because of our relationship and the
 17 way things have always been where I felt I was singled
 18 out.
 19 Q. Do you know of any other -- you said there
 20 was talk amongst some of the tankermen about the 12:50
 21 three-day suspension was too harsh for the fire
 22 extinguisher. Do you know of anyone who didn't have
 23 their equipment properly serviced when they went out
 24 on a job that weren't given disciplinary action?
 25 A. You hear about it, but I don't know anybody 12:50

Page 70

1 that I can use as an example. But I did hear that.
 2 Like in telling other people, they will say like they
 3 have had their fire extinguisher when it was expired
 4 and their supervisor just told them to go charge it.
 5 Q. Who did you hear that from? 12:51
 6 A. Oh, let me see. I'm thinking it was Alberto.
 7 That's the only person I can think.
 8 Q. You heard it from him or you heard that
 9 Alberto had a fire extinguisher problem?
 10 A. That he had an example similar to mine, if I 12:51
 11 can recall that correctly. But like I said, just
 12 among tankermen just in casual conversation or
 13 whatever, it came out, you know, with my suspension
 14 that no one had heard of that before.
 15 Q. Okay. 12:52
 16 A. I just took that for what it is.
 17 Q. But the only one that you know that had a
 18 similar problem that wasn't --
 19 A. I want to say it was --
 20 Q. The only one that you knew of that had a 12:52
 21 similar problem was Alberto Gutierrez?
 22 A. Yes, I want to believe that.
 23 Q. And you don't remember who told you that?
 24 A. Not right off.
 25 Q. What -- besides your three-day suspension, 12:52

Page 71

1 what other disciplinary action was taken against you
 2 during your employment with PSC?
 3 A. Well, that was -- that and my termination.
 4 MR. KIGGANS: I need to take a quick
 5 break. Let's go off the record for a second. 12:52
 6 (Break from 12:52 p.m. to 1:05 p.m.)
 7 Q. Mr. McKenzie, we're back on the record. Now,
 8 let me ask you -- I want to go through -- I think we
 9 have talked about all the disciplinary actions except
 10 for your termination, which we'll get to that in a 13:05
 11 little bit. But you had mentioned earlier that one of
 12 the reasons you felt that Mr. Dela Cruz was prejudiced
 13 is because of the comments that he made. And you
 14 mentioned one that he made in March of 2005 when you
 15 graduated from the TCA, saying that he wanted you and 13:06
 16 I think, if I'm not saying this correctly -- I thought
 17 what you said is he made a comment that he wanted you
 18 and Mr. Batchelor and Mr. Duncan on his crew so he
 19 could fire you together.
 20 A. So he can fire us all at one time. 13:06
 21 Q. You don't remember who he said that to?
 22 A. Like I said, that was a statement that was
 23 made while I was standing in front of him to -- I
 24 guess there is only -- there was only two other
 25 supervisors in the room, that being Roman and the 13:06

Page 72

1 third. I can't think of his name. They are all
 2 pretty much communicating with each other, deciding
 3 who is going to go where. That comment was made to
 4 one of the two supervisors as we stood there, waiting
 5 on our assignment. So who he was speaking to 13:07
 6 directly, I couldn't tell you.
 7 Q. It was either Mr. Firmin or Mr. Neuman,
 8 Robert Neuman?
 9 A. This is true.
 10 Q. What other comments -- or let me ask you this 13:07
 11 first. Mr. Dela Cruz never made a comment directly
 12 about, "I don't like blacks," or anything like that,
 13 did he?
 14 A. No.
 15 Q. He never used any racial slurs, did he? 13:07
 16 A. No.
 17 Q. What other comments did he make that led you
 18 to believe that he had something against black people?
 19 A. I can't think of any other comments. I base
 20 my determination on how I was treated. 13:07
 21 Q. How did he treat you that led you to believe
 22 that he had something against black people?
 23 A. Well, I just felt like because of his
 24 unwillingness to assist me in getting my endorsement,
 25 because of how he talked at me when he did speak to 13:07

Pages 69 to 72

Page 73

1 me, feeling constantly intimidated about being fired
2 with statements that he would make to me when he would
3 come out to assist me on barges. Just the overall way
4 he treated just me myself personally. I can't speak
5 for anybody else. I just felt like I was being 13:08
6 singled out.
7 Q. Do you know -- is it possible that he talked
8 to white tankermen the same way?
9 A. If he did, I never saw it.
10 Q. Did you ever see him talk to other black 13:08
11 tankermen the same way he talked to you?
12 A. No.
13 Q. How many times did he threaten to terminate
14 you?
15 A. I would say it was twice. 13:09
16 Q. Was that the time -- the two times -- well,
17 the first time when he reprimanded you for the fire
18 extinguisher?
19 A. For the fire extinguisher he made that
20 comment if it was up to him, it would be a firing 13:09
21 situation, but he's going to like be nice or whatever.
22 "I'm just going to go ahead and suspend you," which
23 that was unheard of, even with the suspension.
24 But the comment that he made like upon
25 graduation, because he was standing right next to me, 13:09

Page 74

1 and it wasn't -- it wasn't a comment where he was
2 whispering or anything. He just basically kind of
3 shouted it out. And I don't know if he was expecting
4 a laugh from it or not. But just like I said, coming
5 straight out of graduation, that's been the tone with 13:10
6 us, with me and Mason.
7 Q. So that was -- those are the two times that
8 you think he threatened to terminate you?
9 A. Those are the two times that I felt that he
10 definitely used the word terminating. But like I 13:10
11 said, the times that he did come out to assist me on
12 barges, he would have his clipboard. And it was more
13 of a -- you're calling him for help, but he's coming
14 out there to write you up. Basically that's been --
15 that was the norm. 13:10
16 Q. Besides you, do you know of any other
17 tankermen who were terminated by Petroleum Service
18 Corporation during your employment?
19 A. No, I can't. Everyone that I can think of
20 resigned. 13:10
21 Q. Let me go back to some preliminary questions
22 again. You don't have any tape recordings of -- you
23 didn't make any tape recordings of any employees or
24 managers of the Petroleum Service Corporation, did
25 you? 13:11

Page 75

1 A. No.
2 Q. Did you keep any notes or diaries about
3 things that were happening while they were happening?
4 A. No.
5 Q. Is there anyone besides Mr. Dela Cruz that 13:11
6 you felt discriminated against you?
7 A. The only thing that I can think of when we
8 had the fire extinguishing incident, I expressed my
9 concern to Jimmy Horn that I was wishing to be
10 reassigned to another supervisor. He asked me what 13:11
11 was my reason. And I told him that I felt like Mason
12 was out to fire me. And that if I was going to stay
13 at PSC, it would be best that I go to another
14 supervisor because that wasn't working out.
15 Q. Do you remember when this fire extinguisher 13:12
16 event occurred?
17 A. It was shortly after graduation. But there
18 should be some documentation companywise. But I can't
19 say exactly when. It was shortly after graduation.
20 Q. Was it before you went out for the car 13:12
21 accident?
22 A. Yes. Definitely before that.
23 Q. According to my notes, your first car
24 accident was in June of 2005. Does that sound about
25 right? 13:12

Page 76

1 A. That sounds about right.
2 Q. You think that this suspension occurred
3 sometime between March of '05 and June of '05?
4 A. Yes, I want to say so.
5 Q. How long -- I'm sorry? 13:12
6 A. Yes, yes.
7 Q. How long were you out for the first car
8 accident?
9 A. I'm not sure. I would say a month maybe.
10 Q. When was the second car accident? 13:13
11 A. I don't have that date in front of me
12 exactly.
13 Q. How long were you out the second time?
14 A. The second time, probably about the same
15 amount of time. 13:13
16 Q. About a month?
17 A. Yeah, I would think so.
18 Q. Were there any lawsuits filed over those car
19 accidents?
20 A. Yes. 13:13
21 Q. Where were those suits filed?
22 A. One was with -- the law firm was Miller, was
23 one. I would have to look at the information.
24 Q. Did the first one result in a settlement?
25 A. Yes. 13:13

Pages 73 to 76

Page 77

1 Q. How much?
2 A. I don't have the dollar amount.
3 Q. Do you have an estimate?
4 A. I'll say maybe 3,500, maybe.
5 Q. And what about the second one? 13:13
6 A. The second one is about that also. About
7 that much.
8 Q. What were the injuries you sustained in the
9 first accident?
10 A. It was my lower back, my right ankle, knee 13:14
11 area.
12 Q. Both in the first -- you had back problems
13 and your knee?
14 A. Yeah. I had stiffness. It was like a lower
15 sprain. It was like a sprain. 13:14
16 Q. What were the injuries you had in the second
17 one?
18 A. The second one was left head, shoulder, right
19 shoulder and back.
20 Q. Were both settled? 13:14
21 A. They were both settled.
22 Q. Do you know if a lawsuit was actually filed?
23 A. Yes, there was a lawsuit filed.
24 Q. Where were the lawsuits filed? Not with the
25 law firm, but do you know what court they were filed 13:14

Page 78

1 in?
2 A. No, I never went to court. They settled out
3 of court. We reached an agreement, whatever, through
4 the personal injury attorneys.
5 Q. As I understand -- I want to talk for a few 13:15
6 minutes about your employment history. I understand
7 you first went to work for PSC in November of 2004.
8 Does that sound about right?
9 A. That sounds about right.
10 Q. Who did you work for just before going to 13:15
11 work for PSC?
12 A. For Apple Towing.
13 Q. That's a towing company?
14 A. Yes.
15 Q. What did you do for Apple Towing? 13:15
16 A. I was a tow truck operator. And with Lucent
17 Technologies prior to that.
18 Q. How long did you work for Apple Towing?
19 A. I didn't work there long. About two months
20 maybe. 13:15
21 Q. You were a tow truck driver?
22 A. Yes.
23 Q. Why did you leave there?
24 A. That just wasn't -- that was just trying to
25 facilitate -- trying something. I just applied for it 13:16

Page 79

1 just to stay productive.
2 Q. What was your rate of pay?
3 A. It was based on the calls that you made. It
4 wasn't much. I would say I might have made \$300 a
5 week, something like that. Do it as you want to, 13:16
6 really. No set schedule.
7 Q. I'm sorry?
8 A. It was really -- I didn't work much there.
9 Q. Where are they located?
10 A. They are located in the Astro -- the Reliant 13:16
11 Center -- Reliant Energy area or Astrodome area.
12 Q. Did you have any problems in that employment?
13 A. No.
14 Q. You left voluntarily?
15 A. I left because it wasn't worth it. The 13:17
16 money -- it wasn't worth my time.
17 Q. And you left voluntarily?
18 A. Yes.
19 Q. You weren't subject to any disciplinary
20 action? 13:17
21 A. No.
22 Q. What about with Lucent Technologies?
23 A. Lucent Technologies, I was with them for
24 about eight years.
25 Q. And what was your ending rate of pay? 13:17

Page 80

1 A. Ending rate of pay, I was salary making 53.
2 Q. \$53,000 a year?
3 A. Yes.
4 Q. And who was your supervisor?
5 A. Jessie Elizondo. 13:17
6 Q. And what was the reason for leaving?
7 A. Layoffs.
8 Q. Where is Lucent located?
9 A. B Central Parkway. 2501 B Central Parkway.
10 Q. Where is that? 13:17
11 A. That's off of 290 and 610.
12 Q. Were you subject to any disciplinary action
13 during your employment with Lucent?
14 A. No. In fact, with Lucent, I hired on as an
15 installer and got a promotion into management. 13:18
16 Q. Who did you work for before Lucent?
17 A. CGG.
18 Q. What is that?
19 A. That's an oil and gas company -- seismic oil
20 and gas company. 13:18
21 Q. Where are they located?
22 A. They were located at the time at 2501
23 Wilcrest, I believe.
24 Q. And what did you do for CGG?
25 A. I was a computer operator. 13:18

Pages 77 to 80

Page 81

1 Q. And what was your pay there?
2 A. I think I was making back then -- I think I
3 left there making \$15 an hour, maybe.
4 Q. How long did you work for CGG?
5 A. I was with CGG for about four years. 13:19
6 Q. And what was the reason for leaving?
7 A. To pursue a job with the telephone company,
8 Lucent Technologies.
9 Q. You left voluntarily?
10 A. Yes, I did. 13:19
11 Q. Any disciplinary action?
12 A. No.
13 Q. What about before CGG, who did you work for?
14 A. No one. That was it. That was my first job.
15 Q. Out of high school? 13:19
16 A. Yes.
17 Q. That's what I was going to get to next. Your
18 education, what is your education level?
19 A. High school level, 12th.
20 Q. Where did you go to high school? 13:19
21 A. Willow Ridge High School.
22 Q. And what year did you graduate?
23 A. 1984.
24 Q. Did you ever attend college?
25 A. No. 13:19

Page 82

1 Q. Did you attend any schools past Willow Ridge
2 High School?
3 A. No.
4 Q. Other than the Tanker Career Academy?
5 A. While I was in high school, I went to a 13:19
6 vocational school or career school. It's called Fort
7 Bend Career School, which I took data processing,
8 which landed me the computer operator position right
9 out of high school.
10 Q. Any other education? 13:20
11 A. No.
12 Q. Let me ask you if you -- have you been -- I
13 want to ask about some other legal matters. Have you
14 ever been arrested?
15 A. No. 13:20
16 Q. Now, civil proceedings, like this one, where
17 one party is suing another for money damages, have you
18 ever been involved in any other civil proceedings
19 other than this one?
20 A. No. 13:20
21 Q. You have never been through -- you said you
22 have never been divorced. You were separated.
23 Neither you nor your spouse filed for divorce?
24 A. No.
25 Q. What about bankruptcies? 13:20

Page 83

1 A. Yes.
2 Q. How many times have you filed for bankruptcy?
3 A. One.
4 Q. When was that?
5 A. That was two years ago I want to say. 13:20
6 Q. Is that resolved now?
7 A. Yes.
8 Q. When was this resolved?
9 A. I would say November. I'm not sure of the
10 exact dates, but everything resolved. 13:21
11 Q. Was it resolved before or after this lawsuit
12 was filed?
13 A. It was resolved before. The date, I'm not
14 sure of the date. It might have been longer than
15 that. I can find that out. 13:21
16 Q. Did you have an attorney?
17 A. Yeah.
18 Q. Who was that?
19 A. His last name was -- I want to say George
20 Webb. 13:21
21 Q. Where is he located?
22 A. Off of 59 and Sugar Land area.
23 Q. Do you know where that was filed? Was it
24 filed in court here in Houston?
25 A. Yes. 13:21

Page 84

1 Q. What was the reason you filed bankruptcy?
2 A. There was some -- we had a lot of overhead
3 debts. We also had -- my wife and I had a restaurant
4 franchise that we was into and we ended up just
5 starting over. 13:22
6 Q. What was the restaurant?
7 A. Casey's Hot Wings & More.
8 Q. And where was that?
9 A. We had several locations. One in Holly Hall.
10 One in the Third Ward area. One off of Scott Street. 13:22
11 Q. Now, let me ask you. Can you think of any
12 other legal proceedings that you have been involved
13 in?
14 A. The car accidents and the bankruptcy, that's
15 it. 13:23
16 Q. Have you ever filed an EEOC charge, other
17 than the one against Petroleum Service Corporation?
18 A. Yes, I did.
19 Q. Who?
20 A. Let me see. What was that about? I'm trying 13:23
21 to think of the date. That was with -- that was with
22 a company, IMSL. I forgot about that. That was
23 around the same time with CGG.
24 Q. IMSL?
25 A. Yeah. International Mathematical Statistical 13:23

Pages 81 to 84

Page 85

1 Library. I'm sorry.
2 Q. Where are they located?
3 A. That was off of -- it was off of 2500
4 Westheimer.
5 Q. And how long did you work for IMSL? 13:24
6 A. I was with them for a year.
7 Q. And what happened that caused you to file an
8 EEOC charge against them?
9 A. Actually, like a termination there was --
10 what happened at termination -- that's a while ago. I 13:24
11 was terminated and put on -- first I was put on
12 probation and then I was terminated for attendance.
13 Q. When was this? Do you recall?
14 A. '84.
15 Q. Right out of high school? 13:24
16 A. Yeah, right out of high school.
17 Q. What was the basis of the EEOC charge?
18 A. Well, with being terminated, I felt that
19 there was -- what brought about the termination, there
20 was a lot of people had went -- we went to lunch as a 13:25
21 group and we only had 45 minutes. We came back an
22 hour -- after an hour. And my supervisor -- I was
23 already on probation for attendance then. She called
24 me out of the little group and proceeded to terminate
25 me. At that particular time I just didn't feel like 13:25

Page 86

1 that was right coming out of high school. I filed.
2 After filing, I don't even believe we even followed
3 with it, or whatever.
4 Q. Who is "we"?
5 A. Actually myself. 13:26
6 Q. What was your supervisor's name?
7 A. Jeannie Meese.
8 Q. Were you alleging race discrimination, or
9 what type of discrimination were you alleging?
10 A. I just felt like -- at the time I felt like 13:26
11 it was just -- that I was terminated wrongfully. So
12 that was just my start to try to push back.
13 Q. You weren't alleging discrimination?
14 A. No.
15 Q. And it just never went anywhere? 13:26
16 A. It didn't go anywhere.
17 Q. Is that the only other time that you have
18 filed an EEOC charge, other than against PSC?
19 A. Yes, that's the only other time.
20 Q. Is that the only other time in your life you 13:27
21 have been involuntary terminated from a job?
22 A. That's the only time, besides that and PSC.
23 Q. Now, have you ever filed a workers' comp
24 claim?
25 A. No. 13:27

Page 87

1 Q. What about -- you said you did not apply for
2 unemployment after your employment with PSC ended?
3 A. No, I did not.
4 Q. Have you ever filed for unemployment
5 benefits? 13:27
6 A. Yes, I have.
7 Q. When was that?
8 A. In between Crowley and Bouchard.
9 Q. Did you receive unemployment benefits?
10 A. Yes, I did. 13:27
11 Q. How much?
12 A. The maximum, like 250 a week or something
13 like that.
14 Q. For how many weeks?
15 A. I did it for -- until I got my job at 13:27
16 Borchard. Because with Crowley, what they do is since
17 it's seasonal work. It's seasonal, so after the
18 season is over, until they hire you next season, many
19 of the tankermen filed for unemployment. They granted
20 me the unemployment in between Crowley, because I 13:28
21 didn't go back. They was going to grant it to me
22 anyway. I did take unemployment after -- between PSC
23 and the phone company. That was part of my severance
24 package.
25 Q. After you were let go by the phone company? 13:28

Page 88

1 A. After I was laid off, they gave me a
2 severance package and granted me unemployment for a
3 year.
4 Q. But you said didn't even apply for it
5 after -- 13:28
6 A. I didn't apply for it after.
7 Q. Let me finish. That's okay. Our court
8 reporter told me at the break I need to start doing
9 better with that. And she's right. We can't talk
10 over each other. That makes her job too hard. 13:28
11 But you didn't apply for unemployment after
12 your employment with PSC ended?
13 A. No, I did not.
14 Q. Why is that?
15 A. I felt like I knew they were going to fight 13:28
16 me on that. And in addition to that, I was doing okay
17 financially. I just knew that they were going to deny
18 me the unemployment. I didn't even go in that
19 direction.
20 Q. Were you concerned that they had just cause 13:29
21 to terminate you?
22 A. No.
23 Q. You didn't think they did?
24 A. No.
25 Q. You just weren't willing to fight them on it? 13:29

Pages 85 to 88

Page 89

1 A. I just -- I was just moving on. In fact,
2 that was my frame of thought at the time. And I knew
3 with my Merchant Marines document, that I was just
4 going to do something else with my license. I just
5 moved on. And I chose to deal with that this way, 13:29
6 versus going through unemployment.
7 Q. You agree that your Merchant Mariner's
8 Document that you got during -- after the TSA is a
9 valuable document?
10 A. I do believe it's a valuable document. 13:29
11 However, I could make more money with another
12 endorsement, which I agreed upon.
13 Q. How do you know that?
14 A. Because an LG tankerman makes more than a
15 dangerous liquid tankerman, even at PSC. 13:30
16 Q. Was there anyone at PSC that did only LG
17 work?
18 A. That I'm not sure, but the more endorsements
19 you have, the more qualified you are, the more money
20 you make. 13:30
21 Q. Did you -- when you -- let's go back to when
22 you first hired on with PSC. Did you apply for
23 employment at the same time you signed up for the TCA?
24 A. Say that again. Repeat the question.
25 (McKenzie Exhibit 1 marked.) 13:30

Page 90

1 Q. Yes. Well, let me give -- let me go ahead
2 and hand to you and your attorney a document that I've
3 marked as Exhibit 1 for this deposition. Can you tell
4 us what that is.
5 A. This appears to be a breakdown of the cost. 13:31
6 Q. Let me ask you. Up at the top, a little bit
7 of it is cut off. But it says Petroleum Service
8 Corporation Tankerman Training School Enrollment
9 Agreement. Do you remember signing this document?
10 A. Yeah, it does look familiar. 13:31
11 Q. Is that your signature down there about
12 two-thirds of the way down?
13 A. Yes, that is my signature.
14 Q. And you dated this November 15, 2004?
15 A. Yes. 13:31
16 Q. Do you remember reviewing this document?
17 A. I remember going over it briefly with
18 Christina explaining to me what it was.
19 Q. Okay. That's Christina Maldonado?
20 A. Yes. 13:31
21 Q. Did she sign this in your presence?
22 A. I believe so.
23 Q. You get a copy of this?
24 A. I don't think I have a copy of this.
25 Q. Tell me what you remember Christina 13:32

Page 91

1 explaining to you when you signed this agreement.
2 A. Just at the top the program costs. Her
3 giving me the breakdown of that. But that's all I can
4 really recall her going over.
5 Q. Tell us, if you would, the steps that you 13:32
6 went through before you signed this document that
7 we've marked as Exhibit 1. Let me rephrase the
8 question.
9 You said earlier that Mr. Duncan referred you
10 and Mr. Batchelor to TCA. Tell me what steps you took 13:32
11 to get enrolled in the TCA prior to signing Exhibit 1.
12 A. Oh, I contacted PSC. They sent me like a
13 brochure, a little pamphlet, explaining the
14 endorsements and career as a tankerman. It's a little
15 fold-out. 13:33
16 Q. Let me go ahead and hand to you -- I don't
17 mean to cut you off, but I'm going to go ahead and
18 hand to you and your attorney a document that I've
19 marked as Exhibit 2.
20 (McKenzie Exhibit No. 2 marked.) 13:33
21 Q. This is actually a document that your
22 attorney produced to us in this case because it's got
23 Bates labels down at the bottom consistent with the
24 ones that she produced. Is this the pamphlet that
25 you're talking about? 13:33

Page 92

1 A. No.
2 Q. This is -- is this the Tankerman Career
3 Academy manual that you got?
4 A. I did receive this, but that wasn't part of
5 the process in me hiring on, from getting that 13:33
6 information from Mr. Duncan.
7 Q. When did you receive this?
8 A. I believe I received this during like
9 orientation when we were filling out a lot of
10 paperwork. 13:33
11 Q. Okay. You received Exhibit 2 sometime after
12 you signed Exhibit 1?
13 A. Yes, I want to say that.
14 Q. Let's go back to my question, then. Tell me
15 the process that you went through before you signed 13:34
16 this enrollment agreement that we marked as Exhibit 1.
17 A. PSC sent me some information pertaining to
18 the school. I interviewed with -- I want to say
19 Christina. She kind of gave me an overview on the
20 company. There was also like some information that I 13:34
21 had to provide, meaning I had to come up with some
22 type of form of tuition. So they pointed me in the
23 direct with a lender called Key something. It was an
24 institution that was suggested that you use if you had
25 good credit. This is one that they preferred -- one 13:34

Pages 89 to 92

Page 93

1 of their preferred financial institutions. At that
2 point, once I was approved on line for the tuition.
3 they cut a check to PSC. And at that point the hiring
4 process began.
5 Q. Now, when you applied for the tuition loan, 13:35
6 was that before or after you signed Exhibit 1?
7 A. I believe this was after I was approved for
8 the loan.
9 Q. Okay.
10 A. After I was approved for the loan, then 13:35
11 that's when I came and did the agreement on the
12 enrollment, I'm thinking.
13 Q. At what point in time do you contend someone
14 promised you that you were going to get your LG
15 endorsement? 13:35
16 A. That was communicated to me throughout the
17 TCA program. It was communicated to me -- that was
18 the understanding even with knowing what type of
19 tankerman I was going to be at. I would say during
20 the interview process and orientation and throughout 13:36
21 the TCA program, that upon completion, that's what I
22 would be getting. Even with the -- I guess the manual
23 that they gave us explaining the benefits and this and
24 that, or their policies and procedures manual,
25 whatever it is called. 13:36

Page 94

1 Q. Is that an employment document? Are you
2 talking about Exhibit 2?
3 A. It came in a binder and I want to say that
4 this is it.
5 Q. Exhibit 2? 13:36
6 A. Exhibit 2, I want to say that.
7 Q. But you didn't get this before you signed the
8 enrollment agreement?
9 A. I don't think I did. And I'm not sure. I
10 think this came after. This came during me being 13:37
11 accepted.
12 Q. This meaning Exhibit 2?
13 A. Yeah, Exhibit 2 came after Exhibit 1.
14 Q. Okay.
15 A. If I recall. 13:37
16 Q. Okay. So nothing in Exhibit 2 caused you to
17 sign Exhibit 1?
18 A. Not at all.
19 Q. Okay.
20 A. I believe this enrollment agreement was just 13:37
21 one of the documents that are required after being
22 approved for the tuition and as you move forward.
23 Q. Do you know of a white tankerman at Petroleum
24 Service Corporation that didn't have their LG
25 endorsement? 13:37

Page 95

1 A. I don't know of any.
2 Q. Do you know if Mr. Horn had his LG
3 endorsement?
4 A. I have no idea.
5 Q. What about Big John? Do you know if he had 13:37
6 his LG endorsement?
7 A. I have no idea. I was closer to the people
8 in my group. As far as Big John, Mr. Horn, those guys
9 were there before I got there. They had already been
10 actively working as an employee of PSC. So what their 13:38
11 endorsements were, I have no idea.
12 Q. All right. Now, did you talk to anyone about
13 the TCA besides Ms. Maldonado before signing your
14 enrollment agreement?
15 A. I'm not understanding the question. 13:38
16 Q. You said at some point that Mr. Duncan
17 referred you to the company.
18 A. Okay.
19 Q. You called and asked for some information and
20 they sent you a brochure. 13:38
21 A. Right.
22 Q. Do you have a copy of the brochure?
23 A. No, I do not.
24 Q. Do you remember if the brochure said anything
25 about an LG endorsement? 13:38

Page 96

1 A. I want to say that it did. I want to say
2 that it did.
3 Q. But you're not sure?
4 A. But I am not sure.
5 Q. Did you talk to anyone -- then I think you 13:39
6 said you applied for the loan. And then you went in
7 and talked to Ms. Maldonado?
8 A. There was another lady there that I spoke
9 with that helped me with my stuff. I don't think
10 she's with PSC anymore. I can't think of her name. 13:39
11 She helped me process some of my paperwork and it
12 wasn't Christina.
13 Q. Was she an older lady?
14 A. No. She was a younger lady.
15 Q. Okay. Who do you remember specifically 13:39
16 telling you that you are going to get your LG
17 endorsement?
18 A. I remember that coming out of the course with
19 Jimmy Horn.
20 Q. Jimmy Horn? 13:40
21 A. Jimmy Horn, because he started the program.
22 Q. So during the TCA?
23 A. All during the TCA program, especially when
24 we got to the LG part of the curriculum, was with the
25 understanding that these things will be done to ensure 13:40

Pages 93 to 96

Page 97

1 that we not only know and understand what is involved
2 in doing an LG, but this is what we will be doing upon
3 graduation. Even at graduation, we even got our
4 certificate indicating that we were qualified for DL
5 and LG endorsement. 13:40
6 So the whole time from beginning -- from me
7 hiring on, I knew the acronym LG, what it stood for.
8 During the curriculum we discussed LG-type scenarios
9 that we would be involved in. We were trained on LG
10 barges. And upon graduation, I never received my LG 13:41
11 endorsement. So that was the oral understanding that
12 I conceived through the whole process.
13 Q. Did anyone tell you that besides Jimmy Horn?
14 A. I can't think of anybody else. Like I said,
15 as we got to the LG part of the course, again, the 13:41
16 class was being directed and being trained to upon
17 graduation your dangerous liquids and your LG.
18 Q. I think I have one more question about
19 Exhibit 1. Did you say you read this before you
20 signed it or did you just kind of skim over it and 13:41
21 sign it?
22 A. She explained it to me, if I remember. We
23 went over the program cost. And she asked me did I
24 understand that. And I said yes. And she -- that's
25 the only part that I really remember from this 13:42

Page 98

1 document here. I'm just thinking it was -- like I
2 said, she just explained the tuition, this and that,
3 almost like it was a formality and I signed it.
4 Q. Is this the only document you signed that day
5 or were you signing a whole bunch of documents that 13:42
6 day?
7 A. I think I signed some more documents this
8 day.
9 Q. Let's go to Exhibit 2 for a minute. And is
10 this the only Career Academy manual that you got? 13:42
11 A. Yes, I believe so.
12 Q. Let me ask you to take a look over at page 10
13 of the manual. It's got another mark on it above the
14 page that says AM 0055. Do you see that?
15 A. Yes, page 10. 13:43
16 Q. Now, there appears to be some highlighting on
17 here in about the middle of the page under "Field
18 Training - After the Trial Enrollment Period."
19 A. Yes.
20 Q. Did you do that highlighting? 13:43
21 A. No. No, I did not.
22 Q. It says here in the highlighting -- it says,
23 "Field training continues after the Trial Enrollment
24 ends. It consists primarily of hands-on barge
25 transfer operations and related topics. Typically, 13:43

Page 99

1 field training will last from 90 to 120 days, with
2 exceptions to this time frame being permissible in
3 special circumstances."
4 Is there anything about that paragraph that
5 you feel PSC did not fulfill? 13:44
6 A. I don't know. What is your question? What
7 are you asking me again?
8 Q. Do you feel like you got field training under
9 the Tankerman Career Academy?
10 A. Yes, during the academy I got field training. 13:44
11 Q. You got hands-on barge transfer operations?
12 A. Yes, during the TCA, until I was turned
13 loose.
14 Q. Did the field training last from 90 to 120
15 days? 13:45
16 A. It was a four-month period. So I would say
17 yes, I went through that.
18 Q. Look over page 12, if you would. Down
19 towards the bottom there is a heading that says "Field
20 and Classroom Training." 13:45
21 A. Uh-huh.
22 Q. And the first paragraph says, "Field and
23 classroom subjects including safety."
24 A. Right.
25 Q. "Job requirements, cargo classifications." 13:45

Page 100

1 A. Uh-huh.
2 Q. "Fire safety, cargo information sources,
3 PPE," which I understand stands for personal
4 protective equipment.
5 A. Yes. 13:45
6 Q. "Cargo hazards, pollution prevention, barge
7 design and equipment."
8 A. Uh-huh.
9 Q. "Vessel and cargo documentation, transfer
10 plans, pre-transfer conferencing and inspections, 13:46
11 connecting and disconnecting, barge loading, barge,
12 vapor control, liquefied gas loading and liquefied gas
13 discharging." Did you get all of that training during
14 the TCA?
15 A. Yes. Did I get that training? You mean 13:46
16 classroom or are you just saying in general?
17 Q. Both, classroom and field.
18 A. Yes, I did, classroom and field.
19 Q. Now, the next paragraph, it talked about the
20 classroom portion of PCS DL and LG curriculum adheres 13:46
21 to the standards outlined in 46 CFR, part 13. Do you
22 know what those -- CFR stands for Code of Federal
23 Regulations.
24 A. Yes.
25 Q. Do you know what subject matters are required 13:46

Pages 97 to 100

Page 101

1 by those regulations in terms of the classroom
2 training?
3 A. I can't think of them right off.
4 Q. But you agree you did get classroom
5 training -- 13:47
6 A. Yes, I did.
7 Q. -- for DL endorsement and an LG endorsement?
8 A. Yes, I did get the classroom training.
9 Q. Now, the final paragraph says, "It is the
10 successful completion of this portion of the school 13:47
11 that makes the student eligible to obtain a Merchant
12 Mariner's Document with a Tankerman-PIC (Barge) DL and
13 LG endorsement."
14 Is that the language that you're talking
15 about that you feel entitles you to the LG 13:47
16 endorsement?
17 A. Yes. That's the main one, yes.
18 Q. Do you know whether or not that's referring
19 to the classroom work or everything?
20 A. I believe that's -- I think that should -- 13:47
21 the way it reads to me, it's under field and classroom
22 training as to header. So I would take that to mean
23 what that last sentence, that includes both.
24 Q. According to your earlier testimony, you feel
25 like you got all that during the TCA. It was just 13:48

Page 102

1 that someone messed up in the paperwork?
2 A. I believe that I did not receive the -- I may
3 be missing a discharge or two with the LG. I did some
4 of it during my -- during my training. But whether I
5 had all of the discharges or not, I thought that I did 13:48
6 upon graduation. Because it was mentioned to me that
7 I needed some more, or whatever, from the
8 conversation. Since I didn't have it, he said --
9 Mason -- the company assured me they would do what
10 they had to do to get me my LG in the future. But the 13:49
11 future never came. I never -- they never did fulfill
12 their obligation to me as far as that's concerned. So
13 with that being said, that's where I am now.
14 Q. You said that Mr. Fox was your trainer?
15 A. Yes, he was. 13:49
16 Q. Was he a good trainer?
17 A. Yes, he was.
18 Q. You didn't think that he discriminated
19 against you?
20 A. No, not at all. So as far as the process. 13:49
21 even with me getting my DL, I had entrusted PSC to
22 handle putting the paperwork together and putting me
23 in a situation where I get my LG.
24 Q. Look over at page 17, if you would. Do you
25 see where this says MMD, Merchant Mariner's Document? 13:50

Page 103

1 A. Yes.
2 Q. The paragraph reads, "The classroom portion
3 of PSC's Dangerous Liquid and Liquefied Gas Curriculum
4 for Tankerman-PIC (Barge) students satisfies the DL
5 and LG cargo course requirements as stated in 46 CFR, 13:50
6 part 13." Then it goes on to say in the next
7 sentence, "Eligibility requirements: Cargo Course
8 Successful completion of this portion of the school is
9 an essential component for eligibility for a Merchant
10 Mariner's Document." Do you see that. 13:51
11 A. Yes, I do.
12 Q. Let me -- I apologize. Let me -- for the
13 record, I realize that I handed to you the one that
14 has my handwritten notes on it and I probably
15 shouldn't do that. 13:51
16 MR. KIGGANS: Counsel, do you have any
17 objection to me making your copy the exhibit because
18 yours doesn't have any handwriting on it, does it?
19 MS. TACKETT: No, no objection to it.
20 MR. KIGGANS: Thank you. 13:51
21 Q. And I don't have an extra copy so I apologize
22 for that. I'm going to put it -- okay. That's my
23 mistake.
24 Mr. McKenzie, I've now fixed my error here.
25 A. Okay. 13:51

Page 104

1 Q. And put the exhibit sticker on the copy that
2 I had previously given to your attorney.
3 A. Okay.
4 Q. I'm going to refer you back to page 17. You
5 agree that page 17 is -- that one is only talking 13:52
6 about the classroom portion. Correct?
7 A. Yes, because that's speaking about the
8 curriculum. Student satisfies DL and LG cargo courses
9 required. So that's classroom.
10 Q. And if I understand correctly, your 13:52
11 contention is that you should have gotten this LG
12 endorsement upon graduation from the TCA?
13 A. Yes.
14 Q. And that was in March of 2005?
15 A. Yes, it was. 13:52
16 (McKenzie Exhibit No. 3 marked.)
17 Q. Let me hand to you and your attorney a
18 document that I have marked as Exhibit 3. Is this one
19 of the certificates that you got upon completion of
20 the TCA? 13:53
21 A. I don't really recall this one per se.
22 Q. Let me hand to you. We've already talked
23 about Exhibit 4. That's the card itself. Did you get
24 that at the graduation?
25 A. I got that at graduation. 13:53

Pages 101 to 104

Page 105

1 (McKenzie Exhibit 5 marked.)
2 Q. Let me hand to you and your attorney a
3 document that I have marked as Exhibit 5. Do you
4 remember getting Exhibit 5?
5 A. Yes, I do remember getting Exhibit 5. 13:53
6 Q. Did you get that upon graduation?
7 A. I want to say I did because it came in --
8 yeah, I believe I got this one at graduation.
9 Q. You don't remember getting Exhibit 3?
10 A. Not really. 13:54
11 Q. Now, these are both signed by Ms. Ramsey.
12 sitting here to my left. When did you first meet
13 Ms. Ramsey?
14 A. I think the first time I met her is when she
15 came to Houston and she gave a presentation. Well, 13:54
16 actually, the first time I met her would have to be at
17 graduation because she came and did the presentation
18 after we had graduated.
19 Q. What kind of presentation was it?
20 A. I don't remember. I think it was about, 13:54
21 maybe, I guess, understanding -- I'm not really sure.
22 I remember her coming and doing a presentation.
23 Q. Was it a PowerPoint presentation?
24 A. Yes, it was.
25 Q. Do you remember it talking about how much 13:55

Page 106

1 money tankermen would make?
2 A. No, I don't really recall that right off.
3 Q. Do you remember anyone ever giving you
4 estimates of what tankermen can make on an annual
5 basis? 13:55
6 A. It was in the brochure that we got. It was a
7 range of what you could make. I think it was up like
8 to 75 your first year, something like that.
9 Q. Do you remember how much you made your first
10 year? 13:55
11 A. My first year, I made like -- I would say
12 maybe in the thirties, maybe. Yeah, it was probably
13 in the thirties, perhaps.
14 Q. Do you remember what -- you said the brochure
15 gave a range. Do you know what the low end of the 13:56
16 range was?
17 A. It either said up to 70 or anywhere between
18 50 and 70 your first year. It was something similar
19 to that.
20 Q. That first year you're talking about 2005? 13:56
21 A. Yes.
22 Q. Didn't you get -- you got a pay increase when
23 you finished the TCA. Correct?
24 A. Yes, I did.
25 Q. So for the first three months of 2005, you 13:56

Page 107

1 weren't on a tankerman's scale?
2 A. No, I wasn't. I was on a training school.
3 Q. What was the training scale?
4 A. Like \$10 an hour, like that.
5 Q. In June of 2005 is when you were off for 13:56
6 about a month due to the car accident. Correct?
7 A. Yes. What's the date again?
8 Q. Sometime in June of 2005.
9 A. Yeah, that's about right.
10 Q. Do you remember what your earnings were for 13:56
11 2006?
12 A. Not really. Like maybe 43, 49.
13 Q. Was it in that range that the brochure said
14 you could earn?
15 A. No. 13:57
16 Q. It wasn't?
17 A. I don't think so.
18 Q. But you were off for a month in 2006?
19 A. Right, I was off for a month.
20 Q. Does around 48,000 sound about right for your 13:57
21 earnings for 2006?
22 A. That might be about right. It was somewhere
23 in the 40s, 43, 48.
24 Q. That was for, I guess, 11 months since you
25 were off for a month. 13:57

Page 108

1 A. Yes. How much did I make in the first year?
2 Q. 2005?
3 A. Yes.
4 Q. Well, according to my notes, it was around
5 37,752. 13:57
6 A. That's about right.
7 Q. For the second year my notes reflect 48,625.
8 Does that sound about right?
9 A. Yeah, that sounds about right.
10 Q. Do you agree that you were not eligible to 13:58
11 work as a tankerman by yourself before you graduated
12 from the TCA?
13 A. Yes, absolutely.
14 Q. You agree?
15 A. I agree I was not able to. 13:58
16 Q. Upon graduation in March of 2005, you were
17 Coast Guard-certified to work as a tankerman and load
18 and unload barges?
19 A. That is correct.
20 Q. Do you agree that the vast majority of work, 13:58
21 at least for Petroleum Service Corporation, was with
22 dangerous liquids and not liquefied gases?
23 A. That I couldn't tell you for sure.
24 Q. You agree that you have had a successful
25 career as a tankermen without the LG endorsement since 13:59

Pages 105 to 108